

Magnesium, when part of magnesium stearate, is not a divalent cation. As such, Reynolds does not disclose or suggest an antimicrobial composition as recited in instant claim 1. Thus, Reynolds cannot anticipate or render obvious claim 1, or any claim depending directly or indirectly from claim 1.

The Office Action appeared to base the restriction requirement on the assertion that claim 1 is anticipated or rendered obvious by the lozenge composition of Example 9 of Reynolds. In view of the above-noted discussion of Reynolds, Applicants respectfully traverse the restriction requirement.

Applicants expressly reserve the right under 35 U.S.C. §121 to file a divisional application directed to the non-elected subject matter or any subject matter disclosed in this application during the pendency of this application.

Election of Species Requirement

The Office Action required that Applicants elect one of the following species:

Zn²⁺, Ca²⁺, Cu²⁺, Ni²⁺, Co²⁺, Fe²⁺, Sn²⁺, Mn²⁺, SnF⁺, and CuF⁺.

Applicants hereby elect species Zn²⁺.

Of elected Group I claims, the claims that read on the elected species include claims 1-11 and 16-19.

Applicants note that upon allowance of a generic claim, Applicants are entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141.

II. CONCLUSION

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, order number FREE-004.

Respectfully submitted,
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Date: October 28, 2010 _____ By: /Paula A. Borden, Reg. No. 42,344/ _____
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